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Supreme Court of the United States

OCTOBER TERM, 1941

No. 951.

STANDARD OIL COMPANY OF NEW JERSEY,
Petitioner,

against

OLAF JORGENSEN, JAMES J. SHEA, VASCO CANTOS and GUNNAR HANSON,
Respondents.

PETITIONER'S REPLY BRIEF.

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If anything, the respondents' brief emphasizes the importance of the federal questions involved by showing the confusion which exists concerning the construction and application of the Sections 4527 and 4582 and the meaning of the shipping articles.

However counsel for the respondents misinterprets some of the testimony; he refers to other testimony which was stricken from the record; he makes statements of fact unsupported by the record; in alluding to Section 4527, he ignores the critical provision of the Section; and some of the cases which he cites do not support the propositions for which he claims they stand.

Because of these features of respondents' brief it is thought that this reply is necessary. This is particularly so because in going beyond the record counsel falls into serious error in his attempt to describe the corporate affiliations of the defendant, which in any event are entirely irrelevant.

The master did not testify that a lengthy voyage was contemplated as the respondents assert. The record shows that the master said nothing more than that under the articles "it was possible" that the vessel might have visited distant waters (R. 47). In this connection it should be noted that the articles *permitted* but did not *compel* the vessel to go further than Montreal.

The assertion that seamen are required to wait long periods for employment refers to testimony that was stricken from the record by the trial court (R. 16). This, of course, is irrelevant. Furthermore it is refuted in part by the record which reveals that two of the respondents (James J. Shea and Gunnar Hanson) had been working continuously for two months previously to the commencement of the voyage in question (R. 62, 63). None of respondents testified at the trial and there is no evidence that any of them had difficulty obtaining work before or after the employment in question.

Although permission of the United States Maritime Commission to sell the vessel was obtained the record does not disclose when this was done. Counsel's assertion that the permission was obtained before the commencement of the voyage is pure assumption on his part.

The respondents urge that a lengthy voyage was contemplated. They imply that they undertook the voyage in the hope that it would be lengthy. These contentions are not supported by the record. A long voyage was permissible. It was not essential to the fulfillment of the articles.

The respondents did not testify at the trial. There is no evidence as to what prompted them to accept this employment. Two of them had worked on the previous voyage (R. 62, 63). Furthermore the trial court consistently refused to admit testimony purporting to explain

the terms of the articles, and properly so under the parol evidence rule (R. 47, 48, 49, 50).

If the vessel had returned to New York from Montreal before one month and there discharged the crew, certainly the seamen would have no rights under Section 4527. That they had hopes that the voyage would be longer would not have altered the situation.

Respondents set forth what they conceive to be the only three elements necessary to the application of Section 4527. They ignore a fourth element, which this court considered paramount in *The Steel Trader,* 275 U. S. 388. This fourth element is that the discharge must be improper and amount to a breach of contract on the part of the shipowner.

The respondents argue that the purpose of Congress in enacting Section 4527 was to compensate seamen whose employment lasts less than a month because of the inconvenience entailed in accepting the employment. Speculation concerning the purpose of Congress is not necessary. The language of the Section plainly shows that Congress intended merely to provide a liquidated measure of compensation when a seaman's contract of employment is "breached" before the expiration of one month. This court has so held in *The Steel Trader, supra.*

The respondents argue that Section 4527 must be applied because petitioner failed to comply with Section 4582. This reasoning is fallacious if the two Sections were intended by Congress to be mutually exclusive as petitioner contends. If petitioner had failed to comply with Section 4582 in circumstances where it was applicable, this failure would not render Section 4527 applicable if that Section does not apply in the case of the sale of a vessel in a foreign port. The seamen's remedies in such case would be under Section 4582.

The respondents assert that there was no "discharge" or "pay-off" in a foreign port and therefore Section 4582 did not apply, although admittedly the vessel was sold in a foreign port and the crew was discharged. It is not necessary to examine with nicety the precise connotation of the terms "discharge" and "pay-off" and ascertain where either or both occurred. The application of the statute is not dependent on the place where the seamen are "discharged" or "paid-off" but solely upon the "sale" of a vessel at a foreign port and the consequent discharge of the crew. Indeed one of the alternative duties of a shipowner under the statute is to return the seamen to the port at which they were shipped.

It is contended that Section 4582 does not apply because the seamen did not consent to their discharge. In petitioner's main brief this argument was anticipated and the cases cited by the respondents were discussed.

Finally counsel for the respondents attempts to discredit the defendant by drawing inferences from his erroneous understanding of the corporate affiliations of the defendant. Counsel is totally confused as to these relations. He has misread Moody's Industrial, 1941, which was not in evidence. Since he has departed from the record in an attempt to discredit the petitioner and the good faith of the sale of the vessel it is hoped that the court will indulge a similar departure from the record by the petitioner to refute the erroneous conclusions put forth.

The title of the petitioner is "Standard Oil Company of New Jersey". It is a Delaware corporation. Its stock is owned by a corporation bearing the name "Standard Oil Company". This latter company is a New Jersey corporation.

The petitioner (Standard Oil Company of New Jersey) owns no stock of Panama Transport Company. The stock

of Panama Transport Company is owned by "Standard Oil Company" not the petitioner herein. Consequently the petitioner is not the parent company of Panama Transport Company and therefore the sale of the vessel was not from a parent company to a subsidiary. There is no evidence to support the implication by counsel for the respondents that there was anything sinister in the sale of the vessel from the petitioner to Panama Transport Company.

Respondents contend that the phrase in the articles "and back to a final port of discharge in the United States" means a port where cargo or ballast is discharged.

A reading of *Schermacher* v. *Yates,* 57 Fed. 668, will show that the court considered that a final port of discharge is one where something is done which shows an intention to terminate the voyage. The discharge of cargo or ballast is merely evidence of such intention. Obviously it cannot be the criterion for determining the termination of a voyage in all cases, otherwise it would not be possible to terminate a voyage of a vessel which did not carry cargo or ballast.

The use of the word "discharge" in the articles must be understood to refer to the discharge of the seaman and not confused with the discharge of cargo. In various statutes relating to seamen, Congress has used the term in referring to the termination of seamen's employment. In Section 4529 of the Revised Statutes it is provided that, as to foreign voyages, a seaman is entitled to his wages "within twenty-four hours *after cargo has been discharged,* or within four days *after the seaman has been discharged,* whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of *his discharge* on account of wages a sum equal to one-third part of the balance due him". Indeed Section 4527 speaks of seamen who have been *improperly discharged.* Shipping Commissioners are

empowered to superintend seamen's engagement and *discharge*. Section 4508 of the Revised Statutes. Finally the use of the word "discharge" in a contract of employment of seamen can have no logical reference to cargo or ballast. It is submitted that the *Schermacher* case, *supra*, merely refers to the discharge of cargo or ballast as an evidence of the intention to terminate the voyage. The court did not say that this test would be conclusive in all cases.

Respectfully submitted,

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